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FIFTEEN GALLONS:

OR THE

TYRANNY AND INJUSTICE

OF

SUMPTUARY LAW:

AN APPEAL

TO THE PEOPLE.

FIFTEEN GALLONS:

OR THE

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TYRANNY AND INJUSTICE

OF

SUMPTUARY LAW:

AN APPEAL

TO THE GOOD SENSE OF THE PEOPLE OF MASSACHUSETTS.

BOSTON:
SEPTEMBER, 1838.

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July 10, 1869.

PREFACE.

The Editor of this work does not pretend to offer to the people any thing that has not been presented to them, in some form, before. But, believing that "THE APPEAL" might be productive of more good, if more widely disseminated and in a more permanent and durable form, than mere newspaper publication, I have been induced to issue this little work; which pretends to be nothing more than a transcript of the powerful and convincing arguments (contained in "THE APPEAL,") against that most odious, unjust, oppressive and unconstitutional act—THE FIFTEEN GALLON LAW!

THE EDITOR.

Boston, September, 1838.

AN APPEAL, &c.

The question whether a law passed by the Representatives of the people, is just, expedient, and in conformity to sound principles of legislation, is a matter directly within the province of the people to discuss and freely consider. The object of the people in framing a Constitution was "to provide for an equitable mode of making laws," and to this end the people have reserved the right not only to alter the laws through their constitutional representatives, but to alter the government itself, whenever a majority shall see fit so to do.

It follows that when a new principle of legislation is adopted, the people have a right to pass upon it in their primary capacity, and to use all constitutional means to elect or instruct representatives to alter, amend, or repeal such act of legislation.

This is the simple right which those exercise who are opposed to the License Law passed at the last session of the Legislature. They have openly held public meetings, and adopted reports and resolutions, to show the injustice and inexpediency of the law, in order to bring about its modification or repeal, by constitutional means.

And yet, in the exercise of this obvious right, they are charged by a portion of their fellow citizens who support the law, not only with interested motives, but with a violation of good citizenship; and the extraordinary position is taken, that thus constitutionally to take measures to alter existing laws, is, in effect, a sort of conspiracy against the laws.

We find this extraordinary doctrine laid down in a "*Reply* to the report of a committee of those opposed to the License Law," which purports to have been adopted at a *private* meeting held in the Savings Bank, July 9th, and is signed by twenty citizens, who appear to have constituted this secret meeting.

The signers of that Reply say for themselves, "had *we* been originally *opposed* to the law, we should deem it our duty, now that it has been enacted, to lend it a cheerful countenance and support; and we are *pained* to see gentlemen so respectable as the signers of this report, presenting themselves as a *nucleus* around which the scattered elements of resistance to it may cluster."

The object of this aspersion upon the opponents of the law in question, is, evidently, to hold them up to public odium, as the enemies of good government, entering into a conspiracy to concentrate the disaffected portions of society to do some unlawful act.

It denies, in effect, the constitutional right reserved to the people, "to assemble to consult upon the common good," to give instructions to their representatives, and to remonstrate against wrongs done them by the legislative body, and to take measures for

redress of the grievances they may suffer. The opponents of the law are censured for meeting openly to oppose it, by those who hold *private* meetings, from which their fellow citizens are excluded, to devise measures to sustain and enforce it. Which is most in accordance with the spirit of our institutions? If these gentlemen did not fear public sentiment, would they not invite it in public meetings?

The Reply, *instead* of defending the law by sound argument, adopts the slavish doctrine that when a law is once enacted, it is the *duty* of the citizen to lend it a cheerful countenance and support, right or wrong; and to take no measures to alter or repeal it. It contends, that the mere enactment of a law proves that the public welfare requires it, and *therefore* it is the duty of good citizens to submit to it without a murmur.

The fact that the authors of the reply have to rely on doctrine like this to impeach the motives and measures of those opposed to the new license law, proves that they depend more upon the mere existence of the law for its justification and support, than upon reason and equity to sustain it. A law which requires this passive obedience without an examination of its claims to the support of the community, carries, upon the face of it, an arbitrary assumption of power in derogation of right.

If the argument is worth any thing, as applied to the License Law of 1838, will those who now use it inform us why *they* did not regard it of equal weight, when applied to the previously existing license laws?

Why did not *they*, after those laws had been enacted, with which others were content, "lend them a cheerful countenance and support," as they now exhort us to do in relation to the new law? Why did they, by meetings, associations, reports, and petitions, "present themselves as a *nucleus* around which the scattered elements of resistance to the former laws might cluster?"

Had we not just cause to be *pained* at seeing *them* pursue that course to repeal the old and enact the new law, as they have to be pained at our efforts to repeal the new and reenact the old law? Had they remained quiet, and cheerfully supported existing laws, as they now so self-complacently exhort us to do, there would have been no occasion for the report or their reply, and they might have spared themselves the *pain* they now profess to experience so acutely on our account. If there is agitation in this matter, it is obvious that *they* were the first agitators and disturbers of existing laws.

It is thus that the enacters of arbitrary and unjust laws, are always driven to rely upon arbitrary and unjust principles to sustain such laws.

We propose now to examine the general positions we find taken in this Reply, and to state very plainly some of the reasons why we consider the new law based on false principle, and unworthy the approval of good citizens.

The Report of the committee of those opposed to the license law is impugned with much reiteration,

in the Reply, on the ground that it is signed by those who have a direct personal interest in the question. There are six lawyers among the signers to the Reply, and they must know that there is no interest in any signer to the Report, that would disqualify him from testifying in this matter under *oath.* And yet they attempt to discredit the Report by imputing a disqualification, where the law implies none.

This mode of assailing the Report, is a personal and ungenerous reflection that would not be resorted to by men conscious of the strength of their cause. It is wholly immaterial to the merits of the question, from whom the objections to the law proceed, provided they are well founded. It is peculiarly the right of citizens who feel aggrieved by an act of legislation, to remonstrate against it, and none but those who feel some interest in a law, will take any measures to sustain or repeal it.

If the signers of the report have acted honestly, this imputation is unjust. Do the authors of the Reply mean to affirm that those who subscribed the report were acting corruptly from interested motives? If they do *not* mean this, their insinuation has no force. If they *do* mean this, then they belie themselves, by saying in another part of the Reply, that the signers of the Report are "respectable gentlemen," that it derives most of its weight from their character, and that "it is signed by men inferior in character and standing to none in the city." Upon either construction, the uncharitable insinuation is unworthy men claiming to act as leaders in a great moral cause. The true Christian, the real philanthropist, is modest,

not arrogant. He never assumes that he and his alone act from pure and high motives, nor does he denounce all others as enemies to virtue who happen to differ from him. This sort of argument, to asperse motives, would have been just as sound if applied by the tories of the revolution to those who were personally interested in opposing taxation by the British Parliament.

Pride of opinion and the desire to sustain a favorite measure, or to secure the re-election of those who voted for the new law, and are now called in question, may surely go as far to warp their judgment, as any relation in which the other side stand to the law, is likely to effect them. The ground assumed in the Reply is, that the Report "presents the views of men whose occupation disqualifies them from examining the subject impartially." We might reply that nothing renders men less impartial and more in danger of falling into a perverse judgment, than the occupation of a great reformer; one of your self-complacent "stand-thou-aside-I-am-holier-than-thou" men!

But the authors of the Reply themselves admit that the occupation they complain of is not immoral. It is also lawful, under the new as well as the old law, for the new law does not prohibit the occupation of the signers of the Report. Their employment is not affected by that law, nor can their profits be diminished by it. We verily believe that the new law will increase rather than diminish the general sale and consumption. The insinuation as to interest, therefore, fails. Most of the signers of the Report can

continue their occupation without change under the new law. That law does not interfere with their selling in the quantities they have been accustomed to sell in, any more than it interferes with the signers of the Reply *purchasing* in the quantities they may have been accustomed to supply themselves with.

If interested and personal motives are to be made the test of argument, it might easily be said that gentlemen who can buy fifteen gallons when they please are not precisely the persons to claim the merit of disinterested *self-denial* in applauding a law that is to affect those only who buy in such quantities.

We also "wish the whole truth to be made known, and that wherever the Reply may be read, it may be understood, that it presents the views of men" who are *not* at all reached by the new License Law, and who may supply themselves, at their pleasure, with the means of an indulgence which this law only denies to the comparatively poorer classes.

This simple statement of the practical operation of the law is enough to show that it is founded on a false principle of legislation. It says to the men who can buy fifteen gallons at a time, "*you* require no restraint from this indulgence; enjoy it as you please:" while to those who can purchase only in less quantities, it says, "*you* require restraint; your appetites must be legislated down, while those of your wealthier neighbours are to be freely indulged."

Is not a law which is framed thus invidiously drawing a marked line between the rich and the poor in

the exercise of the natural right of buying and selling an article which the supreme law of the land, (the law of Congress,) permits to be bought and sold, manifestly a law in derogation of the Constitution, which was framed expressly "to provide for an equitable mode of making laws," and declares that "*all* shall be governed by certain laws, for the common good?"

If to restrain by penal enactments the use of spirituous liquors be for the common good, is that a *certain* law by which *all* are to be governed, which legalizes the sale to one class of the community, and forbids it to another; thus measuring the exercise of the privilege to do a particular act declared to be injurious to the common good, not by fixed principles of right and wrong, but solely by the relative pecuniary means of individuals? Is it not literally selling indulgencies in appetite to the rich in large quantities, which the poor are not allowed to purchase in quantities according to their relative means?

And if it be for the common good that the use of this article should be prohibited, have not those who cannot purchase fifteen gallons at a time as just ground to complain that *their* common good is injured by permitting the use of it to those who can buy in such quantities, as the latter have to assume that their common good is wronged by those who buy in smaller quantities?

The same argument applies to the right to sell. Is that a law for the common good which permits one class to make merchandise of an article authorized to

be imported into the State, provided they can purchase it of the importer in large quantities, but prevents all others from deriving profit from the sale merely because they can buy only in smaller quantities at a time?

The obvious conclusion is, that if the common good demands the prohibition to one class, it demands it to all classes, both in selling and buying, otherwise the law is invidious and unequal. And further, if the common good required the suppression by law, of the *use* of the article, (in which all admit the evil lies,) that prohibition should extend to every description of *use* tending to excessive indulgence, and should punish him who *gives*, as well as him who sells it for use. If furnishing by selling, is a crime, furnishing by *treating* and *giving* is equally a crime. One man goes into a shop, buys and drinks. Another man goes to his friend's house, or his own sideboard, and takes and drinks. Where is the moral distinction to make one a *crime* and the other not?

Are the advocates of the License Law prepared to carry out their own principle in this respect, and make it a penal offence to *treat* a friend or one's self to the use of this article, in one's house, as well as to sell it to a customer in one's shop?

The authors of the Reply, and those who think with them, claim that *they* may be intrusted with the right to use it, without endangering the common good, but that this discretion cannot be safely allowed to the rest of society, and must be restrained by penal enactments. The signers of the Reply, with amazing self-

complacency, admit that if men would obey the voice of duty, and sacrifice the lower to the higher impulse, there would be no need of this law. Thus assuming that *they*, and those like them, who can buy fifteen gallons, may safely be left to the impulse of duty and moral sense, but that poorer men are not to be trusted, without restraint!

What an insult to a free community! Can that law which sanctions a supposed wrong to society in *gross*, and when committed by the *rich*, and punishes it only in *detail*, when committed by the *poor*, be an equal or just law, for the common good?

If laws so framed, are not "an attack upon the rights of freemen," and "an interference with natural rights," then it must follow, that to deny to one class of citizens a right which is permitted to others, or to allow an indulgence to one class who can partake of it largely, and deny it to others merely because they can only procure it sparingly and in smaller quantities, is no interference with the natural right of enjoying life and of acquiring and possessing property.

The simple proposition is this—If there be a right or privilege, each citizen shall enjoy it, *relative* to his means and ability. And although some natural rights are necessarily surrendered or restrained, to a certain extent in society, the surrender and the restraint must bear proportionally upon all portions of society, like the atmospheric pressure upon every part of the body, or they are unequal and unjust. The same act shall not bring punishment to one class and profit to another. Nor shall offences to society be regarded as criminal in the inverse ratio of quantity.

The use of ardent spirits, it is assumed, is injurious to the common good, and the law undertakes to punish him who furnishes the means of that use, as for a penal offence. But how does it do so? It says you shall not furnish the means of that use in less quantities than fifteen gallons at a time; and this is saying to the rich *you* may freely have the use of it, but to the poorer, you shall not have the use at all, because you cannot buy enough of it at a time!

If the *sale* were a *crime*, then the greater would be the crime, the greater the sale; whereas the reverse of all other modes of estimating crime is applied here, and the *less* the sale the *greater* is the crime, says the law! It is no crime in quantities of fifteen gallons; and crime only begins when the quantity is a gill less than fifteen gallons. Thus the law says to one class, you may have the profit of this crime by wholesale, but it shall be prohibited and punished as a crime by retail.

The principle therefore, is utterly at variance with sense and justice, or natural or social right, as applied to the *dealer* in the article.

Is it less so as applied to the *purchaser?* The evil grows from the *use*, because use is apt to lead to excess, and the excess of that use leads to evil. Heretofore the law has punished not the *use* but any violation of law, which though incited by the use of spirits was equally an offence with or without the use. The act *done*, not the drinking, is punished. Are the authors of the law prepared now to make it a *crime to use* alcohol as a drink? If they are, then

the man who draws it from his fifteen gallon keg in his cellar, which he has purchased at one time, should be punished as much as he who buys it for use in quantities as he wants it. What sort of equity, justice or morality is this which cuts off the *tap* and leaves the *bung* open?

If not prepared te go this length, of punishing the *use* every where as a crime, then it is a false principle in legislation to punish as a crime, either the sale or the use of the article. The drunkard is justly punished for an overt act, a gross indecency, a public exposure, an offence to society. Should a sober man act as the drunkard does he should be punished the same. But the mere use, without drunkenness, is not an offence, and if it were, should be punished the same in the parlor and at the dinner table as in the street or the grog shop.

If it be said that the *use* in small quantities and particular places is punished because it may *lead* to crime, the answer is, that the laws recognize no such principle as punishing any appetite or act which is not criminal in itself on the ground that it may tend to crime. Passion, revenge, avarice tend to crime, but they are not punished in him who excites or who is excited by them, unless an overt wrong or outrage is committed. The drunkard is not punished for any act while drunk, which would not be punished if committed when sober.

The advocates of the doctrine of penal offence as applied to the sale of liquors, are driven back to one single position; and that is, that the use of ardent

spirits is so manifestly injurious to the common good, it ought to be prohibited altogether; and this assumes the right to punish as a *crime* the sale or the use of it, in any and all quantities and in any and every place. If this could be made out, the doctrine of universal prohibition and penal enactment might be sustained.

To *regulate* employment or the vending of articles of merchandise, is one thing; to *prohibit* such employment or sale, and punish it as a crime, is another thing. To sustain the latter, the employment or vending must be shown to be morally and civilly wrong, to make it the subject of punishment.

Now the authors of the Reply, themselves, say of the sale of this article, "we do not venture to pronounce the occupation an *immoral* one." Their License Law says the same, for it punishes the occupation only in retail, and legalizes it in wholesale.

It follows, by their own showing, that they undertake to punish as criminal, an occupation which is not in itself immoral or illegal, but is sanctioned by the United States and State Laws—and moreover they punish the lesser act while they justify the greater.

We repeat, there is no escape from this reasoning but by assuming the ground that the Legislature has the right to prohibit and punish the entire sale or use of spiritous, and mixed liquors, in any and every quantity, and in any and every place in this Commonwealth.

Will the authors of the Reply take this ground? Unless they do, we have shown that a partial pro-

hibition and punishment of a particular act, which is not prohibited and punished in the whole as well as a part, is in violation of every known principle of right and the equal operation of laws.

Why then have they not prohibited and punished as a *whole*, the sale of liquors? Because even they admit that would be unconstitutional. No State can lay a tax on imports or exports, and Congress has the sole power to regulate commerce. Under this power, importation and transportation from State to State, of wines, distilled spirits and teas, are allowed by Congress, as merchandise.

With this the State cannot interfere. Hence, the plain want of power or right to prohibit the introduction of this article by sea or land, and prevent its sale and incorporation into the mass of property, renders the exercise of a power, in the nature of a sumptuary law, to prohibit and punish the sale or use of it (in the ordinary way, in less quantities than it is imported in,) if not clearly unconstitutional, yet so manifestly arbitrary and unjust, that it can never find favour with any portion of society who are not ready to use unjust means to effect supposed laudable ends.

The State has given away all power to control the introduction of this article, in any quantity and manner Congress may provide. The right to import carries with it the right to sell, and no one denies that this right of selling attaches to the package or quantity in which the article is imported. If then the prohibitory law of fifteen gallons could be sustained now, the moment Congress should authorize

importation of spirits in bottles, or in less quantities than fifteen gallons, the State law must yield. This shows that the whole subject matter of prohibition belongs to Congress as a regulation of commerce.

Again. Most of the Temperance Societies hold that wine is as pernicious as ardents. The terms of the law, "mixed liquor, *part* of which is spiritous," would embrace most of the wines imported from abroad or brought from other states. But these are allowed to be brought in bottles, of any size, by act of Congress; and so far the law of the state could not reach the sale or use of this description of intoxicating drinks. In this respect the state law assumes to interfere directly with a regulation of commerce, and is void.

Now the only ground on which the sale of intoxicating liquors could be prohibited, is the injury their use does to society; and yet we see that Congress and not the State, can at pleasure regulate the quantity that may be sold, by describing the *minimum* quantity in which it may be imported; and that, by an existing law of Congress, the State law can, on no pretence, prohibit the sale of one large class of intoxicating drinks, in pint or half pint or gill bottles. This again shows that the State law trenches on powers exclusively given to Congress.

The authors of the Reply dispose of the Constitutional question very summarily. They content themselves with claiming *might* rather than right, and say "the Legislative power is *omnipotent*, except in particular cases where it is controlled."

Is not this an extraordinary position for men to take to justify laws to advance a *moral* cause? The sale of the article is nothing, if nobody would use it for beverage. Even this law not only protects the fifteen gallon drinker, but licenses the sale in any quantity, for medicine or the arts. It is using it for *drink*, which they wish to prohibit. Why, then, if the Legislature be "omnipotent," not make it a States Prison offence for a man to *drink* spirits, in a grocery or at his table?

Let us see where this will lead. The United States Constitution interferes with no *sumptuary law* of a State, however outrageous and arbitrary. The Temperance Societies have got a sumptuary law passed touching drinks, and claim Legislative *omnipotence* to justify it! The *Health Societies*, which are rapidly forming, and likely soon to be as numerous and powerful as the Temperance Societies now are, may, in a few years, get a law to punish the sale of all *meats* in less quantities than fifteen pounds at a time, or "any mixed" food "*part of which is*" GREASE!

Grease is the great parent of evil with them, as *Alcohol* is with the signers of the Reply. It is ever thus with fanaticism. Look all the time through a small orifice, and a very little object seems enlarged, till it covers all space. It is so with your great reformers, who look at a partial evil till they magnify it to the size of the moral universe.

Why—one of the very signers of the Reply, a worthy gentleman and of sane mind, has actually contended, in a Health Convention in this city, that sickness is *crime*, because it is brought on a man by

his wilful perversity in swallowing *grease;* and his friend doubted whether sick people should be prayed for unless they would give up swallowing grease! This reasoning, if the anti-grease theory be true, is just as sound as the argument of the signers of the Reply. They would punish men for furnishing any drink, with alcohol in it, because its use is injurious to society. The Health-men would take the same ground, and punish men for furnishing any food with grease in it, for the same reason. "Drinking alcohol, says one man who signs this Reply, is a crime, and selling it is felony, because it leads to crime. Therefore down with the liquor-sellers!"

"Eating *grease,* says another signer of the Reply, is a crime, for it leads to sickness, which is a self-inflicted crime, and furnishing the means of committing crime is surely a felon. Therefore down with the butchers!"

This is something more than ridicule. There is no possible difference between the *principle* and the reasoning of the two cases, and if the Temperance-man succeeds in his sumptuary law, the Health-man will eventually in his.

Is it then, an answer to a strong and rational argument against the enactment of a prohibitory law, affecting the tastes and appetites of individuals, to say, "the Legislature is 'omnipotent,' and can do as it pleases?"

So the Legislature could revive the law to hang Quakers, and enforce the law, (which has never been

repealed to this day,) to punish Witchcraft. There is nothing in the United States Constitution to restrain this, any more than there is to restrain sumptuary laws. Nor could the State Constitution control this power at all, should the Courts decide that Quakers were Infidels.

Does this sort of *might* constitute the *right*, on which the friends of the License Law are willing to go before the people?

It is because this law is founded on *might*, and not *right*, that we oppose it. It is for this reason it will be opposed, not merely by "liquor-sellers," but by every good citizen who would put some limits to sumptuary laws, and to arbitrary exercises of "omnipotent power," by a Legislature.

It is this first encroachment on right, by arbitrary power, that should be guarded against. Since we have had a Constitution, this is the first open attempt at a sumptuary law. Where will it stop? It is justified on the ground of "OMNIPOTENCE" in the Legislature. The justification is more alarming than the law itself. It should alarm every freeman to find such doctrines of power maintained by men of standing in society. The doctrine that *might* is *right* comes from members of the Legislature and lawyers most active in getting up this law; and some of them are equally ardent reformers in *eating* as drinking, to say nothing of other reforms If this encroachment on individual rights, this restraint on appetite, is submitted to, in the article of *drink*, why not next in that of meat and clothing and houses and equipage? One man lives

splendidly, and incites another to extravagance. Ruin, forgery, suicide follow! will you punish the rich man, restrain his living, or make it a crime to sell him costly upholstery?

"RESIST WITH CARE THE SPIRIT OF INNOVATION UPON THE PRINCIPLES OF YOUR GOVERNMENT, HOWEVER SPECIOUS THE PRETEXT," says Washington in his Farewell Address.

The specious pretext of aiding temperance by *law*, has deceived many worthy citizens into sanctioning an innovation upon the principles of our government, never before attempted.

This force law to effect a moral reform, means a restraint of appetite, or it means nothing. If it does not restrain appetite by diminishing the use of liquors, it fails of its object, and will prove worse than useless. If it does restrain appetite it is a sumptuary law, and therefore an innovation on the principles of our government, never tolerated since the existence of the Colonial blue laws.

Daniel Webster has well said that our fathers went to war seven years on an *abstraction*. The principle was a great one. The practical issue was trifling; only whether the women should have their choice of tea or cold water. Great Britain merely claimed to restrict that choice as to those who could not pay the tax. The rich might have the tea, just as they may have their fifteen gallons of ardent. Our fathers would not stand that.

The Health Societies are as much opposed to tea as the Temperance Societies are to rum. When the former get the power in the Legislature, they may make selling tea, less than fifteen pounds at a time, a penal offence, and thus demonstrate to posterity that our fathers were great blockheads for going to war about taxing their tea, when they ought to have been obliged to the British for taxing it, clean up to prohibition.

True, our fathers threw the tea overboard; not because they disliked it, or would punish its sale, but because they would not have their rights or their appetites interfered with by arbitrary and unjust laws; and the end of the struggle was, that the people secured the right to drink tea, or let it alone, as they liked. It will be so in this sumptuary law to regulate what men shall drink, by "*omnipotent*" legislation!

The distinction between the new and all former laws, is too plain to be frittered away by the loose declamation of the "Reply." Heretofore all License Laws have *regulated* the sale of liquors as an article of merchandize. The present law *prohibits* the sale, and makes it a crime with direct reference to the *use* the purchaser is to make of it.

The authors of the "Reply," though they pay no respect to the opinions intimated in the "Report," would doubtless respect similar opinions, if laid down by Judge Story or Chief Justice Marshall. We quote the language of those distinguished Jurists.

"The States have a right to pass health laws, quarantine laws, and other police laws, not contrary to the laws of Congress, but I cannot admit that the States have authority to enact laws which trench on the authority of Congress to regulate Commerce."

"Congress has authorized the introduction of passengers, [spirits] into the country. If a State may levy a tax, authorize removals, require bonds, &c., these burdens would entirely defeat the object of Congress in licensing the *trade*, and may be exerted, at the pleasure of any State to the ruin and annihilation of *trade*."

"There is no difference in effect, between the power to *prohibit* the sale of an article, and to prohibit its introduction into the country. The one would be a necessary consequence of the other. None would be *imported* if none could be *sold*."

"The result of the whole reasoning is, that *whatever restrains*, or prevents the introduction or importation of goods into the country, authorized and allowed by Congress, *interferes* with the exclusive right of Congress to regulate commerce."

Our position then in this, we deny the constitutionality of this law, as a matter directly relating to the regulation of commerce, which the States have given exclusively to Congress. Further, we deny its constitutionality, because it prohibits and punishes as a crime, the sale of an article of commerce which Congress allows to be imported for sale.

But if, so far as the United States is concerned, it be within the "omnipotent" power claimed for the Legislature, to prohibit and punish the sale of this article of merchandize, in less quantities than those authorized by Congress to be imported, then we contend that the law is manifestly arbitrary, unequal and unjust, and in derogation of the State Constitution, which guarantees to the people through the Legislature, "an equitable mode of making laws."

It is clear that the State has no power to prohibit and punish the sale in quantities allowed to be imported. It cannot prohibit its sale unless it can prohibit its introduction, and "any charge on the introduction and incorporation of the article imported into, and with the mass of property in the country, (says Chief Justice Marshall,) is hostile to the power given to Congress to regulate commerce, since an essential part of that regulation, and the principal object of it is, to prescribe the regular means of accomplishing the introduction and incorporation."

Now to admit the incorporation of an article into the mass of property, and its transfer from hand to hand in large quantities, and punish its transfer as property in less quantities, is an outrage upon every equal principle, and indirectly annuls the law of Congress.

The State having no power to exclude the article from becoming incorporated into the mass of the property of the citizens, how, after it gets there, can it be singled out from other property? If it be property, then surely it becomes a direct infringement on the right of the citizens of "acquiring, possessing and

protecting property," and to punish the ordinary uses of that property, in the same manner in which all other property may be used. When the Constitution secures to me the right to "acquire, possess and protect," shall the law deny the right to transfer or use? Did the Legislature ever before undertake to prescribe for what purposes the property of the citizen should alone be used, or that it should be a crime to transfer it in small parcels?

They now say that my property acquired under the constitution shall be sold "to be used in the arts, or for medicinal purposes *only*." Why not say that chickens shall only be sold to make broth for the sick, and "grease" only to make soap and candles!

Apply the doctrine, I have acquired, under the supreme laws of the land, a property in fourteen gallons of alcohol. I have got this and have got no more. It is my property. Have I not the same right to the ordinary and appropriate uses of that property and to its transfer, as of any other article of merchandise, incorporated into the mass of property? Unless the signers of the Reply can prove that ardent spirits are not the subject of property, any more than (as several of them earnestly contend) human beings are the subject of property, they cannot divest me of my right to this property for use or transfer. The Legislature can regulate its sale, as in the case of hawkers and pedlers of dry goods; but can the Legislature utterly *prohibit* me from selling my property because it is *little*, and deny me a right or a license to sell it under any circumstances whatever? Can the Legislature prohibit and punish as a crime the sale of this description of merchandise in less quantities than fif-

teen gallons, any more than it can prohibit the retailers of dry goods from selling less than fifteen yards of broadcloth at a time; or the trader from selling less than fifteen barrels of flour?

Our opponents, therefore, are driven back upon the position, if they have any, that a great public necessity demands the *entire* prohibition of the importation, introduction, manufacture and *use* of a certain article of merchandise, and that this species of property must be seized and confiscated wherever it is found for the common good. This is an entire new principle of legislation, and if it applies to one article, may be applied to all. But if it be property, and the public good demands that it should be taken away, then the public must pay for it.

The only possible pretence for applying this new principle in legislation, (of destroying property by forbidding its sale,) to alcohol, must be that the article injures the public good. Now that injury consists solely in intoxication. It is the tendency of an act; the lawful use of certain property. The evil to be removed then, is *intoxication.*

Now if the Legislature has power to prohibit by penal laws a tendency to this evil in part, it has in whole. If it can punish a *little* tendency to a public injury, it can punish a *great* tendency.

And here is the absurdity our opponents are involved in. We say that intoxication is an evil in society, but as it depends upon men's appetites, its abolition must depend on moral conviction and the good sense of the people. Go on then with your arguments as

you please, but let alone force laws to punish men for using an article, whether innocently or not, which you have no power to prohibit or exclude from the State. Let drunkenness be punished wherever it may be found; in high or low, under the tables of the rich, who supply themselves by the pipe, or behind the screen of the dealer, who furnishes it to those who can afford it only in less quantities.

The law which punishes drunkenness does not discriminate between the *kinds* of liquor which cause it. But the new law punishes the sale of certain *kinds* of liquors in particular quantities, while it legalizes the sale of other intoxicating drinks in any quantity, and of *all* intoxicating drinks in quantities of fifteen gallons. The pretended object of the law, therefore, to abolish intoxication, is not reached at all. Intoxication depends upon appetite, and not upon the particular quantity in which the stimulus must be bought at one time. So long as the appetite exists, and the stimulus can be had by an individual, or by combinations of individuals, if one has not the means, just so long capital punishment itself, if imposed on the sellers in small quantities, would not prevent the use of it by those whose appetites demand it.

Now the new law will not only fail to abolish intoxication, or even diminish it, but it undertakes to restrict one class and gives free indulgence to another. It only proposes to restrain the appetites of the poor, while it freely indulges the appetites of the rich. Such a law can be no more just or equal than a law that one man may buy meat and another shall not, and common sense says to the Legislature, "either

put it out of the power of all classes alike to get any article to be used for intoxication, or your laws are arbitrary, unequal and unjust, and do not reach or remedy the evil."

The authors of the Reply are driven to yield the whole ground on this argument; for perceiving that they cannot prohibit the sale and exclude the article, they escape from a conclusion which would make their law a palpable violation of the laws of the United States, by just saying "*every one can buy it provided he will buy fifteen gallons at a time.*" What is this but confessing that they mean to protect what they call *crime* in the *gross*, and only punish it in detail? to uphold it in the rich, and restrain it in the poor? We contend that the only just mode of treating the subject (beyond a judicious system of regulation) is to rely on the voluntary principle in this cause as in the advancement of religion and all moral causes depending on volition and conviction. The supporters of the law affirm that they mean to protect the fifteen gallon drinkers. They shall suffer no restraint or hindrance. Clearly, then, the law applies restraint to inability to buy in given quantities, not to the sale or to the use. This is manifestly absurd in principle, unless it can be shown that fifteen gallons cannot intoxicate, and only a less quantity than that can intoxicate.

It requires little reflection to convince any sound mind, that such a restraint, by force of law, upon the less than fifteen gallon purchasers, while all who can purchase that quantity are freely indulged, can no more be enforced in a community governed by equal

laws, than could a law that no man should sell fuel in less quantity than fifteen feet at a time.

Unless you could banish all fuel, and strike it from existence, you could not enforce such a law.

For the same reason, so long as an appetite stronger even than a desire to be warmed by the use of fuel, possesses men; no penal laws, short of the extermination of the means of intoxication, will prevent men obtaining it.

We contend, therefore, that the regulation of such a propensity, of such an appetite, depends on moral causes and not on sumptuary or force laws. The friends of the new law seem to have grown weary in well doing; tired of the slow process of moral suasion, and thinking they now have the power to enforce men for the good of their souls, they are eager to make converts by compulsion. The spirit of the Inquisition was engendered by the same process. The Church was resolved to punish, where it could not convince. The friends of the License Law have come to a like conclusion. They can wait no longer for reason to work, and insist on applying the rack to those who cannot buy indulgence on a large scale.

If they mean to claim the right to suppress intoxication by force laws, they can only do it by an uniform prohibition and exclusion of every article tending to intoxication, and the punishment of all who use it. They must have power to stop importation of wines and spirits, (ultimately to be extended to teas and coffee, when Health Conventions can control the

Legislature,) to prohibit distillation at home, to shut up brew-houses, and to demolish the Cider presses of the farmer; and if this fails, and distillation and fermentation still go on, they must cut down his orchards and root up his grain, lest he should convert his apples and rye into cider and gin.

If the *tendency* to acts, and not acts themselves, is to be punished by this novel code, let us go back to the fountain head.

Who is prepared for these consequences? And yet they are the legitimate inferences from the new License Law; and unless they can be justified on the plea of necessity and power, it shows this law must be wrong in principle, in violation of the spirit of our institutions, and of the supreme law of the land.

It shows the folly of the law by the impossibility of its reaching at all, the object it really aims at, and yet does not avow; namely the suppression of all possible tendencies to intoxication.

Here then is a limit to even the "Omnipotent power of the Legislature," claimed by the authors of the Reply. They admit that it is wrong to prescribe what men shall drink, and they say "the limit to power is the *impossibility* to use it."

Very Well. Then we show that unless they can prohibit the importation, manufacture, existence and use of intoxicating liquors, their law does not advance the cause at all, for it becomes an *impossible* law, and therefore its object is as much beyond the reach of law as is the conscience and will of men.

We deny the right to make experiments in legislation, trenching upon fundamental principles of liberty, merely to see whether a moral evil cannot, perhaps, be checked a little in a particular class.

We might enter into a more minute examination of the arguments used in the Reply, and easily expose their fallacy in detail, but that other and higher considerations have already occupied so much space. If the principles here laid down are sound, no examples of legislation in other matters can argue them away.

The spirit of that Reply, we regret to perceive, is essentially sneering, insulting and arrogant. It is written in the very opposite of that maxim inculcated by the true Apostle of temperance, who was no bigot in these matters, and who said to the overzealous reformers of his day, "be *temperate* in all things."

A good cause never requires to sustain it, insinuations and flings, insulting to the characters and feelings of those who happen not to agree with the advocates of extreme measures in moral reform.

It would be amusing, were it not so much to be regretted, to observe that while professing to be strongly opposed to "reproachful epithets and uncharitable imputations," the authors of the Reply have most wantonly indulged in aspersions upon the motives of an entire class of their fellow citizens, and sneer at the whole opposition to their force law, existing in the minds of temperance men, as well as others, as merely the notions of "a few venders of ardent spirits, *clamorous* at the prospect of diminished *gain*."

Is this an argument to address to the understanding in a moral cause? How easily it were retorted in kind. But we prefer yielding to our opponents without competition, a free *license*, in any and all *quantities* they may choose to deal in, in the article of "reproachful epithets and uncharitable imputations."

Will the signers of the Reply take this argument *home* to themselves, by way of illustration. Their position is, that the signers of the Report should not be listened to, nor their arguments, however sound, have any weight, nor the law be altered on their representations, *because they are interested!*

Apply this. Many of the signers of this Reply are or have been directly interested in the manufacture and sale of woollens and cottons. Their names may be found attached to Memorials, Reports, Resolutions and the like, urging upon Congress the adoption and preservation of a Tariff of protecting duties. Were you honest, gentlemen signers of the Reply in this, or did your "occupation" and interest *disqualify* you from speaking the truth or acting uprightly in urging upon Congress the adoption of laws from the operations of which you have amassed fortunes?

When you were laboring, year after year, and by all the influence and means you could bring to bear, to prevent the reduction of duties and to enforce a system that went directly to promote your pecuniary interests, would you have thought that Anti-Tariff gentlemen had treated *you* any better than you have treated *us*, had they said of you and your efforts, "the occupation" of these men entitle their arguments to

no credit. They are only "a few venders of woollen and cotton goods, *clamorous* at the prospect of diminished *gain*."

Possibly too, we might ask, without great injustice, whether the testimony of those who have some interest now in the sale of an article of merchandise, authorized to be sold by the laws of Congress, is not, on the whole, as much entitled to credit, as this sort of *States' evidence* from gentlemen who have acquired handsome fortunes by the traffic, and who, without thinking of refunding the proceeds of what they deem in others to be the wages of iniquity, assume to give edifying advice upon the wickedness of a business, the fruits of which they are enjoying with entire self-complacency.

But passing over these evidences of the ill temper of the signers of the Reply, (who seem to fancy that their mere precept, without example, is to be as "omnipotent" with the people, as they say the power of the Legislature is,) we will notice but one of the extremely unfair modes of illustration resorted to in the Reply.

First, they admit that the sale of liquors "is not an *immoral* occupation," and then they compare it to keeping a brothel!

Again, they admit that "every one may buy it, provided he will buy fifteen gallons at a time," and then they compare suppressing the sale *under* fifteen gallons to the exercise of the power of a government to suppress brothels, obscene print shops, gambling houses and lottery tickets!

Strange that intelligent men did not see the absurdity this argument drives them to. Here is the language of their Reply.

"Government [they say] cannot prevent a man's being licentious, but it may suppress brothels and prohibit the sale of indecent prints. Government cannot quench the spirit of gaming, but it may suppress gambling houses, and prohibit the sale of lottery tickets. Government cannot slake the unnatural thirst of the drunkard, but it may suppress those places of temptation, which by their *number* are continually provoking the crime of drunkenness."

Now, gentlemen, carry out your argument just as you carry out the License Law, and see where it lands you. You say, "every one may buy ardent spirits for drink, provided he will buy fifteen gallons at a time." Say *this* to the people in your next Reply:

"Government may suppress brothels, to prevent men being licentious in small quantities, but every one may be as licentious as he pleases, provided he will procure fifteen persons of ill fame at a time, and keep them in his own house!"

Again, "Government may prohibit the sale of indecent prints by retail, but every one may buy them provided he will buy fifteen at a time!"

"Government may suppress gambling houses, but every one may gamble provided he plays fifteen games at a sitting!"

"Government may prohibit the sale of lottery tickets in single numbers, but every one may buy them provided he will buy fifteen at a time!"

Here is the legitimate induction of your own argument, gentlemen reformers! The fact is, there is no similarity in the cases. The vices and crimes you enumerate government *can* suppress, and *does* prohibit, utterly, in all and every quantity. You undertake to class the vending of liquors with these crimes, and then you say you mean to tolerate it, provided a man only commits enough of the crime at one time to satisfy the law. Now just inform us in what quantities you mean to tolerate lewdness and gambling, and we can judge whether the cases you put are parallel to a law which pretends to punish selling a *little* liquor as a great crime, while it protects selling a *great deal* of it as an honest and lawful calling.

The difficulty is, you mistake in first principles. You are ignorant, or conceal your knowledge of the very *definition* of moral wrong and crime. You pretend that selling rum is to be ranked with keeping a brothel, and yet are compelled to admit that it is *not* "an immoral occupation," and also that you have no power to suppress it altogether—only in small quantities. Here is your difficulty. The laws of the United States protect this trade in certian quantities, and yet you assume to punish as a crime the lesser, and justify the greater, and sustain yourselves by a comparison with the power to suppress offences common to brothels and gambling houses.

In conclusion, we would appeal to the calm and considerate friends of Temperance, as a moral cause.

We ask *them* if here are not strong doubts of the justice and constitutionality of this law? What then will be the result of the attempt to force it down?

The authors of the reply give us some insight into the course to be pursued. They pledge themselves to become a corps of *spies* and *informers*, or to employ such a corps to enforce the law. They talk about "*fighting a battle*," "winning a victory," and the "*heat and dust of conflict!*" with wondrous military ardor, as if "eager for the fray;" and they tell us, very knowingly, what *certain* people "must be *made* to understand!"

Now what can be the effect of this when carried into conflict between two classes of society, but to stir up every intemperate passion of human nature, and to let loose "envy, hatred, malice, and all uncharitableness?"

Shall corps of *spies and informers*, the most detestable instruments employed by tyranny and bigotry, be prying into the occupations of our citizens, and filling the courts with all manner of vexatious prosecutions, until direct personal conflict grows out of it, and wholesome laws are brought into contempt by the impossibility of making your juries agree to convict men on an unjust and unequal law!

Are *gentlemen*, who keep snugly at home their fifteen gallons of what they like—who attend public festivals where men indulge freely—are they to send poor wretches round into shops and groceries to buy liquor by the glass and inform against the vender?

How long will this conflict go on, before it will end in giving perfect impunity to the vending of the article without limit or regulation?

What but evil, then, can come of this law? Where the public sentiment is prepared for the *end* this law professedly aims at, (that is entire prohibition,) the law is not needed. Public opinion is a sufficient law If there is nobody to buy there will be nobody to sell. Where the public sentiment is not prepared for it, and the community is divided on the question, the law founded, as it plainly is, in injustice and false principles of legislation, cannot be sustained at all, or if at all only by a conflict more injurious to society than the evil sought to be remedied, and which very evil this Law cannot reach.

We appeal then to our fellow citizens, not as a class or interest, but as men and freemen. Can you, will you sustain such a law? Common sense, common honesty, common policy and common right, demand the repeal of this law. The force doctrine must be abandoned, and all men, who value the good of society should enjoin a speedy recurrence, in the advancement of the cause of temperance, "to the fundamental principles of the Constitution" of the State; not forgetting also the fundamental principles of the constitution of *human nature.*

MEETING IN BOSTON.

At a Public Meeting of Citizens opposed to the License Law, recently enacted by the Legislature, held at the Old Common Council Room, June 5th, 1838, it was

"Resolved, That a Committee be appointed, whose duty it shall be to exercise a general supervision over, and direction of the measures, which may be adopted, with a view to the accomplishment of the purposes of this meeting, to correspond and confer with their fellow-citizens in other parts of the state, who may have the same common object in view, to the end, that there may be concert and harmony in action, and a full and fair expression of the popular sentiment upon this subject."

In compliance with this Resolution the Committee has been organized, and has held several meetings on the subject committed to their charge. On Monday, July 30th, at a meeting held for the purpose of acting on a paper purporting to be "a Reply to the Report of the Committee of those opposed to the License Law," the foregoing APPEAL was unanimously adopted, and it was ordered that it be signed by the Chairman and Secretary, and published.

It was accordingly signed by DANIEL L. GIBBENS, Chairman, and GARDNER BREWER, Secretary, and published.